IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1616 of 2006
To
FIRST APPEAL No. 1636 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1 - Appellants
Versus
LEGAL HEIRS OF DECD AMBALAL DAHYABHAI & Anr. - Respondents

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Appearance :

FIRST APPEAL Nos. 1616 to 1623 of 2006

MS KRINA P.CALLA, A.G.P. for appellants
MR AJ PATEL for claimants.

FIRST APPEAL Nos. 1624 to 1630 of 2006

MS TANUJA KACHCHHI, A.G.P. for appellants

MR AJ PATEL for claimants.

FIRST APPEAL Nos. 1631 to 1636 of 2006

MR KRUNAL D PANDYA, A.G.P. for appellants

MR AJ PATEL for claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 11/12/2006

ORAL COMMON JUDGMENT
(Per : HONOURABLE SMT.JUSTICE ABHILASHA KUMARI)

1. These appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 are directed against judgment and award dated January 31, 2005 rendered by the learned 2nd Joint Civil Judge (Senior Division), Vadodara, in Land Reference Case No.807 of 1997 to Land Reference Case No. 827 of 1997 by which the Reference Court has awarded additional amount compensation to the claimants at the rate of Rs.231/- per square metre, over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.9/- per square metre for the acquired lands.

2. A proposal was received by the Government to acquire agricultural lands of Village: Bhayali, Taluka: Vadodara, District: Vadodara, for the public purpose

of Narmada Canal Project. On consideration of the said proposal, the State Government was satisfied that the agricultural lands of Village: Bhayali were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on September 9, 1993. The owners, who were served with the notices under Section 4 of the Act, objected to the proposed acquisition. After considering their objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the agricultural lands of Village: Bhayali specified in the notification, which was published under Section 4 of the Act in the official gazette, were needed for the public purpose of Narmada Canal Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on January 26, 1995. The interested persons were thereafter served with the notices for determination of the

compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.40/- per square feet. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated August 30, 1996, offered compensation to the claimants at the rate of Rs.9/- per square metre. The claimants were of the opinion that offer of the compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Vadodara, which were registered as Land Reference Case No.807 of 1997 to Land Reference Case No. 827 of 1997. It may be mentioned that before the Reference Court, the claimants claimed additional compensation at the rate of Rs. 350/- per square meter.

3. On behalf of the claimants, witness Arvindbhai Dahyabhai Patel, who was one of the claimants, filed affidavit dated December 16, 2004, at Exh.22, as required by Order XVIII, Rule 4 of the Code of Civil Procedure. In the affidavit, it was mentioned that the lands acquired were covered under the development plans prepared by Vadodara Urban Development Authority and that they were highly fertile. It was further stated in the said affidavit that Revenue Survey Nos.197, 199, 200 and 201 of Village: Bhayali situated at a distance of 100 metres from the acquired lands belonged to one Ms.Diwaliben, who was wife of Chhaganbhai Shamalbhai, who had made an application to the Government for converting those revenue survey numbers from new tenure to old tenure under the provisions of the Bombay Land Revenue Code and that the value of those lands in the year 1993, was assessed at the rate of Rs.300/- per square metre as a result of which claim for enhanced compensation should be accepted. In support of this averment made in the affidavit, the order passed by the competent authority was

produced at Exhibit 46 on the record of the case. It was further mentioned in the affidavit that the boundaries of Village: Bhayali and Village: Vasna were adjoining to each other and as Revenue Survey Nos.334/1, 334/2 and 336 of Final Plot No.223 of Town Planning Scheme No.15 of Village: Vasna, which were situated at a distance of 1.5 Kilometres, were sold by a deed dated July 3, 1993 at the rate of Rs.360/- per square metre, the claimants should be awarded enhanced compensation as claimed by them. In support of this averment, the sale deed was produced on record of the case at Exhibit 47. It was also mentioned in the affidavit that the lands acquired were situated in a developed area and, therefore, the claimants were entitled to enhanced compensation.

This witness was cross-examined on behalf of the acquiring authorities, but nothing substantial could be elicited. In cross-examination, it was stated by the witness that he was not present when the notice under Section 9(3) of the Act was served on

the claimants. The suggestion made by the learned counsel for the acquiring authorities that the sale deed produced by him related to the lands, which were situated at a distance, was emphatically denied by him. It was admitted by the witness that no documentary evidence was produced by him to substantiate his claim that each claimant was earning income of Rs.3 Lakhs to Rs.4 Lakhs per hectare per year from sale of agricultural produces.

4. On behalf of the claimants, another witness namely Pareshbhai Laxminarayan Sharma was examined at Exhibit 50. In his examination-in-chief, the witness stated that he was Assistant Town Planner and that his office had occasion to assess the market value of Revenue Survey Nos.197, 199, 200 and 201 of Village: Bhayali pursuant to the applications made by the owners for converting those lands from new tenure to old tenure and that the lands were assessed as on June 24, 1994 at Rs.265/- per square metre. According to him, he had forwarded his report to the Government but the Government had remitted

the proceedings to him after which the lands were assessed as on April 17, 1997 at the rate of Rs.300/- per square metre.

Though this witness was also cross-examined by the learned counsel for the acquiring authorities, nothing substantial could be brought on record to dispute the claim made by the witness in his evidence.

The opponents had examined Mr.Dineshbhai Patel, who was then serving as Executive Engineer, at Exh.57, and Mrs.Ashaben Shah, who was then discharging duties as Land Acquisition Officer, at Exh.54, but, no documentary evidence was produced by the opponents.

5. On appreciation of the evidence adduced by the parties, the Reference Court came to the conclusion that Exhibits 46 and 47 provided guidance for the purpose of fixing market value of the lands acquired in this case. As far as Exhibit 47 is concerned, the

learned Judge noticed that the price of the lands situated near the acquired lands was Rs.265/- per square meter as on June 24, 1994. The learned Judge noticed that assessment of the said price was after publication of notification under Section 4(1) of the Act on September 9, 1993 for acquiring the lands in the instant case and, therefore, after appropriate deduction, the claimants would be entitled to compensation at the rate of Rs.240/- per square metre. While considering Exhibit 47, the learned Judge noticed that in view of the distance of 1.5 Kilometres between the lands, which were subject matter of sale deed Exhibit 47 and the lands acquired in the instant case, 1/3 amount should be deducted to ascertain the market value of the lands acquired in the instant case. After making the deduction, the learned Judge held that the amount which required to be considered while computing the compensation payable to the claimants, was Rs.375/- per square metre. The learned Judge further noticed that subject matter of Exhibit 47 were non-agricultural lands whereas in the instant case, agricultural lands were

acquired and, therefore, further 1/3 deduction was required to be made. Thus, after deducting 1/3 amount from Rs.375/-, the learned Judge held that on the basis of Exhibit 47, the claimants were entitled to compensation at the rate of Rs.250/- per square metre. However, in the ultimate analysis, the learned Judge has awarded in all compensation at the rate of Rs.240/- per square metre by the impguned award, giving rise to the above numbered appeals.

6. This Court has heard Ms. Krina P.Calla, learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned counsel for the respondents, at length and in great detail. This Court has also considered the documentary evidence produced by the parties on record of the case.

7. This Court has considered the award rendered by the Land Acquisition Officer. A bare glance at the award makes it clear that the Special Land Acquisition Officer had called for information from the office of the Sub-Registrar, Baroda, in respect of the sale

transactions, which had taken place during the five years prior to year 1993. The award nowhere mentions that, in fact, sale deeds were produced before the Land Acquisition Officer for his perusal nor it was the case of the Special Land Acquistion Officer before the Reference Court that he had, in fact, perused the sale deeds regarding which information was called for by him from the Sub-Registrar, Baroda. He also relied upon the awards passed by the Land Acquisition Officers, which were modified by the Reference Courts.

8. From the evidence adduced by the claimants, it is evident that the claim for enhanced compensation was based on Exhibits 46 & 47. Exhibit 46 is the order passed by the Collector, Vadodara on April 3, 1998 permitting conversion of certain revenue survey numbers from new tenure to old tenure whereas Exhibit 47 is sale deed dated July 3, 1993, by which Revenue Survey Nos.334/1, 334/2 and 336 of Village: Vasna were sold at the rate of Rs.560/- per square metre. From the impugned award, it is evident that

the learned Judge has recorded a finding of fact that the lands, which were subject matter of Order Exhibit 46, were assessed at the rate of Rs.265/- per square metre as on June 24, 1994. In Exh.46, it is not stated that the lands were assessed at the rate of Rs.265/- per square metre as on Jun 24, 1994, but it is so stated by Mr.Sharma in his substantive evidence before the Court. The final order dated April 3, 1998 indicates that in the year 1997, the lands were assessed at the rate of Rs.330/- per square metre. Here in this case, notification under Section 4 of the Act was published on September 9, 1993 and, therefore, if appropriate deduction is made from the price indicated in Exhibit 46, the value of the lands acquired can be assessed at the rate of Rs.198/- per square metre. As far as Exhibit 47 is concerned, this Court finds that certain survey numbers of Village: Vasna were sold vide sale deed dated July 3, 1993 at the rate of Rs.560/- per square metre. It may be mentioned that apart from the fact that the lands, which were subject matter of Exhibit 47, were situated at a distance of 1.5 Kilometre away from the

acquired lands, which is evident from the map produced on the record of the case, they were non-agricultural land and were smaller in size compared to the size of the lands acquired in the instant case. Thus, after making appropriate deduction, this Court is of the opinion that the market value of the lands acquired on the basis of Exhibit 47 would be Rs.200=00 per square metre and not Rs.240/- per square metre as is held by the Reference Court.

9. Here in this case, the claimants have asserted that the lands of Village: Vasana, which were subject matter of the sale deed dated July 3, 1993, were similar in all respects to the lands acquired in the instant case from Village: Bhayali by notification under Section 4(1) of the Act, which was published in the Official Gazette on September 9, 1993. Therefore, the sale instance cannot be ignored by the Court while assessing the market value of the lands acquired in the instant case. Mr.A.J.Patel, learned counsel for the claimants, has fairly conceded that having regard to the nature of evidence adduced by

the claimants, the claimants would be entitled to compensation at the rate of Rs.200/- per square metre and to that extent, the appeals should be allowed. This Court in companion group of appeals being First Appeal Nos. 1607 of 2006 to 1615 of 2006 decided on July 14, 2006 has determined compensation in respect of lands of the same village at Rs.200/- per sq.mt. Therefore, the instant appeals will have to be partly allowed.

11. For the foregoing reasons, the appeals are partly allowed. The common judgment and award dated October 31, 2005 rendered by the learned 2nd Joint Civil Judge (S.D.), Vadodara, in Land Reference Case No.807 of 1997 to Land Reference Case No.827of 1997 awarding compensation to the claimants in all at the rate of Rs.240/- per square metre is modified and it is held that the claimants would be entitled to compensation at the rate of Rs.200/- per square metre for their acquired lands. The claimants, whose lands are fragmented, would be entitled to get 1/6th of the additional compensation (i.e. Rs.191/- per

square metre) for the remaining uncultivated or sub-cultivated lands as injurious affection. The other benefits, which are conferred on the claimants by the impugned award, are not interfered with at all and are hereby confirmed. The appeals are allowed only to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

(patel)